IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1156 of 1999
In
SPECIAL CIVIL APPLICATION No. 5307 of 1999

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT
&
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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PREMSHANKER V BHATT - Appellant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR JB PARDIWALA for Appellant
MR SUNIT SHAH, GP for Respondent

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT
And

HONOURABLE MS.JUSTICE H.N.DEVANI

1st November, 2007

ORAL JUDGMENT *(Per : HONOURABLE MS. JUSTICE R.M.DOSHIT)*

The appellant in the present Appeal, preferred under Clause 15 of the Letters Patent against the

judgment and order dated 26th July, 1999 passed by the learned Single Judge in Special Civil Application No. 5307 of 1999, is a retired All India Services Officer borne in the cadre of Gujarat State.

The appellant joined the service in the year 1955. On reaching the age of superannuation, he retired from service on 31st December, 1985. On 1st January, 1986, he came to be appointed as Member, Gujarat Civil Services Tribunal [hereinafter referred to as, "***the Tribunal***"]. He resigned as member of the Tribunal with effect from 31st October, 1987. While he was serving as a member of the Tribunal, his service conditions were governed by the Gujarat Civil Services Tribunal [*Conditions of Service of President & Members*] Rules, 1973 [hereinafter referred to as, "***the Rules of 1973***"]. His pay and allowances were fixed in accordance with the said Rules. He was also made member of the contributory provident fund scheme. On severance from that service, he was paid the amount of provident fund including the contribution made by the State Government. Since his resignation as member of the Tribunal in the year 1987, in the year 1991, he demanded that for his

service as member of the Tribunal, he be permitted to draw pay without deduction of pension received for the previous service or in the alternative, he prayed that his service as Member of the Tribunal be treated as pensionable alongwith his previous service and his pension be accordingly re-computed. The said request made by the appellant came to be rejected by the State Government. Feeling aggrieved, the appellant preferred above Special Civil Application No. 5307 of 1999. The petition was contested by the State Government. The learned Single Judge, by *impugned* judgment and order dated 26th July, 1999 rejected the writ petition. According to the learned Single Judge, in view of the later amendment to the Rules of 1973 made in the year 1998, the petitioner's demand for re-computation of pension was not maintainable. Therefore, the present Appeal.

Mr. Pardiwala has appeared for the appellant. He has assailed the judgment of the learned Single Judge. He has submitted that the Gujarat Civil Services [*Conditions of Service of President & Members*] [*Amendment*] Rule, 1998 [hereinafter referred to as, "***the Amendment of 1998***"] were made on 23rd

June, 1998. The said Rules are not made retrospective; either expressly or by necessary implication. The learned Single Judge, therefore, has erred in holding that the condition of service of the appellant was governed by the Amendment of 1998. He has further submitted that the question is that of interpretation of then prevalent Rules of 1973. He has submitted that to cull the legislative intent a Court may take external aid. But external aid in the form of subsequent amendment made in the statutory provisions is not permissible. Construction of the then prevalent rules of 1973 cannot depend upon the subsequent amendment made in the year 1998. He has submitted that since his retirement from service on 31st December, 1985, the appellant was immediately on the next date appointed as Member of the Tribunal i.e., without break in service. His second appointment was thus reemployment in the Government service which shall be governed by Rule 326B and 327 of the Bombay Civil Services Rules and the judgments in the matter of ***M.S Chawla & Ors. v. State of Punjab & Anr.,*** [(2001) 5 SCC 358]; of ***Union of India vs. K.B Khare & Ors.*** [AIR 1995 SC 771]; of ***S.H Sanghvi v.***

State of Gujarat & Anr. [1986 GLH 250]. He has also relied upon the judgment of this Court in the matter of M.B Phanse v. State of Gujarat & Ors. [Special Civil Application No. 10223 of 1999 :: Decided on 3rd February, 2004 :: (*Coram -**Ravi R. Tripathi, J.***)].

The Appeal is contested by Mr. Shah. He has vehemently argued that the service of the appellant as member of the Tribunal was necessarily a fresh appointment. It was neither the extension of his previous service nor the re-employment. The reliance on Rules 326B and 327 of the Bombay Civil Services Rules is misplaced. He has submitted that the service conditions of the appellant as a member of the Tribunal were governed by the Gujarat Civil Services Tribunal Act, 1972 and the Rules of 1973 made thereunder, as amended from time to time. He has submitted that the Rules of 1973 were amended by the Amendment of 1998. By the said amendment, it is now expressly provided that only those of the members who are in active Government service, when appointed as President or Member of the Tribunal, their service as President or Member of the Tribunal shall be counted as Government service for the purpose of pay,

pension, leave and such other purposes. He has submitted that by necessary implication, the president or the member of the Tribunal who are appointed as such, after their retirement from the Government service, cannot claim that the said service be counted as continuous Government service for the purpose of pay, pension, leave and for such other purposes. In support of his submissions, Mr. Shah has relied upon the Rules of 1973; as amended from time to time and the judgment of the *Hon'ble* Supreme Court in the matter of ***V.K Ramamurthy v. Union of India & Anr.*** [AIR (1996) SC 2658]. He has also relied upon the Contributory Provident Fund Rules {*Bombay*} as are applicable to persons appointed to the service and posts in connection with the affair of the State of Gujarat.

We do agree with Mr. Pardiwala that the Amendment of 1998 has not been made retrospective in application – either expressly or by necessary implication. The Rules of 1973, as were prevalent at the relevant time, cannot be construed in the light of the subsequent amendment made in the year 1998. We are, therefore, of the view that the learned Single

Judge did err in relying upon the amendment made in the year 1998 and in holding that the said amendment was explanatory in nature and the service condition of the appellant was governed by the Amendment of 1998.

We, however, do not agree that the service of the appellant as member of the Tribunal was reemployment and the conditions of service were governed by Rule 326B and 327 of the Bombay Civil Services Rules.

The term "*reemployment*" is not defined in any of the Rules referred to here-in-above. In our opinion, re-employment will be the one where an Officer, retired from the service of a master, is re-appointed under the same master. We are, therefore, required to consider whether the appointment of the appellant as a member of the Tribunal under the State Government was re-employment. As noted hereinabove, the appellant at the time of his retirement from service was a member of the All India Services, as defined in All India Service Act, 1951. His service conditions were governed by the All India Services Act, 1951 and various rules made thereunder. It is

the Government of India which is empowered to determine the terms and conditions of service of members of the All India Services. Rule 7 [1](a)(ii) of the All India Services [*Discipline & Appeal*] Rules, 1969 provides that the Central Government shall alone be competent to institute disciplinary proceedings. Sub-Rule [2] of Rule 7 of All India Services [*Discipline & Appeal*] Rules, 1969 provides that, "***..The penalty of dismissal, removal or compulsory retirement shall not be imposed on a member of the Service except by an order of the Central Government.***" The recruitment of members in All India Services is required to be made under the Indian Administrative Service [*Appointment by Selection*] Regulations, 1956. Rule 8 thereof provides, *inter alia*, that appointment of persons to the services shall be made by the Central Government. Thus, it is apparent that right from the recruitment, appointment, probation, pay, leave and allowances, confidential record, termination of service on disciplinary grounds, superannuation to pension, etc., the members of the All India Services are governed by the Central Government. Whereas, the

Tribunal is constituted under Section 3 of the Gujarat Civil Services Tribunal Act, 1972 enacted by the State Government. The eligibility, recruitment, terms of appointment and other conditions of service; including termination of appointment, etc of the President and the Members of the Tribunal are governed by the rules framed by the State Government under the powers conferred by Section 20 of that Act. The said service is an independent judicial service under the State Government. We are, therefore, of the opinion that the service of the appellant as the Member of the Gujarat State Civil Services Tribunal was a fresh appointment and cannot be said to be re-employment. The appellant's claim to compute his service as member of the Tribunal and the previous service as one whole service for the purpose of computation of pension is not tenable.

Heavy reliance is placed on sub-Rule 5 of Rule 4 of the Gujarat Civil Services Tribunal [*Conditions of Service of President & Members*] [*Amendment*] Rule, 1977. The said rule as amended reads - "***..The service rendered by the President or a member shall count as Government service for the purpose of pay, pension,***

leave and such other purposes." Emphasis is on the word, "*Pension*". It is vehemently argued that under the said Rule the service of President or Member of the Tribunal is specifically made pensionable. We do agree that the said sub-rule specifically makes service of a President or a Member of the Tribunal pensionable. Certainly, a President or a Member of the Tribunal is entitled to pension for the services rendered as such, nevertheless the said rule cannot be read to mean that the period of such service should be treated as pensionable as one whole service alongwith the previous service under the Government of Gujarat. To claim pension for the service rendered as President or Member is one thing and to claim that that service be added to the previous service for the purpose of computation of pension as one whole service is entirely a different thing. The aforesaid sub-rule [5] does not even remotely suggest that the legislative intent behind the said sub-rule was that of treating the service of the President or member of the Tribunal as pensionable so as to treat it and earlier service as one whole service.

The above referred judgment in the matter of M.B.Phanse shall not render support to the claim of the appellant. In the said matter, the writ petitioner Shri M.B.Phanse was, at the time of his retirement from service, a member of the judicial service under the State Government. Since his retirement he was appointed as member of the Tribunal. In the similar claim made by him before this Court, the learned Single Judge held that his appointment as member of the Tribunal was reemployment and that for the purpose of computation of pension the second service was required to be added to the previous service in accordance with Rule 326B of the Bombay Civil Services Rules. That judgment was also under challenge before us in Letters Patent Appeal No.1043 of 2000. Irrespective of the correctness of the view that the second service was reemployment under the State Government, we have dismissed the Appeal today for the reasons stated in the judgment. Besides, earlier the said Shri M.B. Phanse was a judicial officer under the State Government, which was not the case with the present appellant.

It is admitted that the appellant, while serving as Member of the Tribunal, was made member of the Contributory Provident Fund Scheme. On his resignation from service as member of the Tribunal, he has been paid the amount of CPF, including the contribution made by the State Government. It appears that the appellant willingly joined the Contributory Provident Fund Scheme and also availed of the benefit of the contribution made by the State Government. The claim made for re-computation of pension in the year 1991 was clearly an afterthought. In any view of the matter, as the said claim had no legal background, such a claim could not have been accepted.

For the aforesaid reasons, we are of the view that the claim made by the appellant deserves to be rejected. Appeal is accordingly *dismissed*. The parties will bear their own cost.

Sd/=

{Ms. R.M Doshit, J.}

Sd/=

{Ms. H.N Devani, J.}

*Prakash**